

## **Advisory Opinion 2020-06**

Issued on April 2, 2020, by

The West Virginia Ethics Commission

### **Opinion Sought**

A **County Commission** asks whether it may participate in determining the validity of a lien against an estate if the County Commission also holds a lien against the estate for unpaid emergency ambulance service fees.

### **Facts Relied Upon by the Commission**

County Commissions are statutorily authorized to impose and collect an annual special emergency ambulance service fee from county property owners through the issuance of an ordinance. W. Va. Code § 7-15-17. The ordinance passed by the Requester states that all “unpaid [special emergency ambulance service fee] accounts will be turned over to a collection agency and/or presented to Magistrate Court.” Further, the Requester has the authority to file a judgment lien against any delinquent special emergency ambulance service fee accounts.<sup>1</sup>

County Commissions also have jurisdiction over all probate matters in the county. W. Va. Code § 7-1-3. Part of a County Commission’s duties as they relate to probate include reviewing and approving an estate’s final settlement and ordering the estate to be closed. See W. Va. Code § 44-2-1.

The Requester asks whether its duties in reviewing and approving an estate’s final settlement create a conflict under the Ethics Act if such an estate has a special emergency ambulance service fee lien held by the Requester.

### **Provisions Relied Upon by the Commission**

W. Va. Code § 6B-2-5(b)(1) states, in relevant part:

A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person . . . . The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

W. Va. Code § 6B-2-5(j) states, in relevant part:

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<sup>1</sup> The practice of a County Commission filing a civil action to obtain delinquent special emergency ambulance service fees has been upheld by the West Virginia Attorney General’s Office. See *July 18, 2018, Attorney General Opinion Concerning Collection of Emergency Ambulance Service Fees*.

(1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

### **Advisory Opinion**

In general, nothing in the Ethics Act prohibits a County Commission from reviewing and approving an estate's final settlement when the County Commission holds a lien against that estate. The most relevant portion of the Ethics Act regarding this issue is the voting provision, which states that public officials may not vote on a matter in which they have a financial interest. W. Va. Code § 6B-2-5(j)(1)(A). Here, any financial interest in the lien against an estate that owes special emergency ambulance fees is held by the County Commission as a governmental entity. The individual County Commissioners do not have a financial interest in the lien.

**Therefore, unless an individual County Commissioner has a financial interest in the probate of a particular estate, the Ethics Act's voting provision does not preclude a County Commission from determining the validity of a lien against an estate when the County Commission holds a lien against the estate for unpaid emergency ambulance service fees. If a County Commissioner has a financial interest in the probate of a particular estate, he or she must recuse himself or herself from all discussions and votes related to the validity of liens against that estate.<sup>2</sup>**

*This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1 through 6B-3-11 and does not purport to interpret other laws or rules.*

*In accordance with W. Va. Code § 6B-2-3, this Opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked or the law is changed.*

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<sup>2</sup> Proper recusal requires a public official to "excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue. The recusal shall also be reflected in the meeting minutes." W. Va. Code § 6B-2-5(j)(3).

/s/ Robert J. Wolfe  
Robert J. Wolfe, Chairperson  
West Virginia Ethics Commission